VINAGA MOORTHY GOPAL

v.

PP

COURT OF APPEAL, KUALA LUMPUR
GOPAL SRI RAM JCA
ABDUL KADIR SULAIMAN JCA
ARIFIN ZAKARIA JCA
[CRIMINAL APPEAL NO: B-05-48-1997]
23 SEPTEMBER 2002

CRIMINAL PROCEDURE: *Sentence - Appeal against sentence - 12 years' imprisonment for culpable homicide not amounting to murder - Seriousness and gravity of offence - Premeditation - Whether sentence manifestly excessive - Mitigating factors - Whether plea of guilty considered by judge - Principles of sentencing - Public interest*

The appellant was charged in the High Court with culpable homicide not amounting to murder under s. 304 of the Penal Code read together with s. 149 thereof. He pleaded guilty and was convicted and sentenced to 12 years' imprisonment. This was the appellant's appeal – on the ground that the sentence imposed was manifestly excessive. It was argued that the learned judge had failed to consider the appellant's plea of guilty and had gone against the trend of sentencing.

Held:

Per Gopal Sri Ram JCA

[1] Public interest is the paramount consideration in the realm of sentencing. The circumstances in which the appellant committed the offence were serious and grave; there was premeditation. The sentence imposed by the High Court was, therefore, not manifestly excessive. (pp 760 h & 761 a-b)

[Appeal dismissed.]

*[**Bahasa Malaysia** Translation Of Headnotes*

Perayu telah didakwa di Mahkamah Tinggi atas tuduhan 'culpable homicide not amounting to murder' dibawah s. 304 Penal Code dibaca bersama s. 149. Dia mengaku salah dan disabitkan dan dikenakan hukuman penjara selama 12 tahun. Ini ialah rayuan perayu atas alasan bahawa hukuman yang

dijatuhkan terhadapnya adalah keterlaluan. Adalah dihujahkan bahawa hakim perbicaraan telah gagal mempertimbangkan akuan salah perayu dan telah menjatuhkan hukuman menentang tren semasa.)

Diputuskan:
Oleh Gopal Sri Ram HMR

[1] Kepentingan awam adalah pertimbangan yang terutama dalam penghukuman. Jenayah yang dilakukan oleh perayu adalah serius dan memudaratkan; terdapat 'premeditation'. Hukuman yang telah dijatuhkan oleh Mahkamah Tinggi adalah, dengan itu, tidaklah terlampau berat.

Rayuan ditolak.]

Case(s) referred to:
Mohamed Abdullah Ang Swee Kang v. PP [1987] 2 CLJ 405; [1987] CLJ (Rep) 209 HC ***(refd)***

Legislation referred to:
Penal Code, ss. 149, 304

For the appellant - K Chandra; M/s K Chandra & Co
For the respondent - Shahrizal Shaari DPP

[Appeal from High Court, Shah Alam; Criminal Trial No: 42-32-98]

Reported by Gan Peng Chiang

JUDGMENT
(Oral)

Gopal Sri Ram JCA:
This is the judgment of the court.

The appellant before us was charged, convicted and sentenced for an offence under s. 304 of the Penal Code read with s. 149 of the same Code. The gist of the charge is that on 10 June 1994 at about 10pm the appellant together with six other persons had with common intention committed culpable homicide by causing the death of one Rajasegaran. The offence took place at Taman Dagang Jaya, Ampang. The appellant and two others were produced before the High Court and charged. All three pleaded guilty.

We are informed by the learned counsel of the appellant that the other two accused at the court below have already served the sentences and have been released from prison. According to the facts admitted by the appellant before the learned judge, he and six others armed with an assortment of weapons that included six parangs, a pipe and a bottle, approached the house of the victim.There they set upon their victim. Their physical attack resulted in

the death of Rajasegaran. The learned judge found the appellant guilty, convicted him and imposed a sentence of 12 years imprisonment. The appellant now appeals to us complaining that the sentence is manifestly excessive.

Mr. K. Chandra of counsel for the appellant has with his usual ability argued a number of points before us. We do not think we do him injustice if we summarise his argument in a single sentence. He says that the learned judge failed to take into account the fact that the appellant had pleaded guilty and went against the trend of sentences usually handed down in a case such as this by the criminal courts at Shah Alam.

Before we make any comment on counsel's complaint, it is quite helpful for us to remind ourselves of the factors that a sentencing court may have to take into account when passing sentence in a given case. These have been summarised by so learned a judge as Mohamed Azmi SCJ in *Mohamed Abdullah Ang Swee Kang v. Public Prosecutor* [1987] 2 CLJ 405; ([1987] CLJ (Rep) 209), at p. 410 (p. 214):

> In assessing the length of custodial sentence, the court must look at the overall picture in perspective by considering, firstly, the gravity of the type of offence committed; secondly, the facts in the commission of the offence; thirdly, the presence or absence of mitigating factors, and, fourthly, the sentences that have been imposed in the past for similar offences to determine the trend of sentencing policy, if any. The fact that a sentence of imprisonment is imposed as a deterrence does not justify the sentencer in passing a sentence of greater length than what the facts of the offence warrant.

We now refer to another passage in the said judgment, also at p. 410 (p. 215):

> A sentencer must give sufficient discount for all extenuating circumstances pertaining to the degree of culpability or criminality involved, which must necessarily vary from case to case apart from other mitigating factors. Unless there is a proper reason for withholding such credits, failure to do so may result in the sentencer not exercising his or her discretion judicially in assessing the level of custodial sentence.

To these elements, we would add the necessity for the court to take into account the public interest which is the paramount consideration in all sentencing cases.

We have considered this case most carefully. The circumstances in which the offence was committed are grave indeed. Mr. Chandra with his customary frankness conceded that the facts disclose pre-meditation. This is therefore not a case of chance medley where the victim and the appellant know each other. Having regard to the serious nature of the offence and taking into account those factors which we have referred to a moment ago, we are unable to say that the sentence in the present case is manifestly excessive.

As our learned brother Abdul Kadir bin Sulaiman JCA pointed out in the course of the argument it would appear even from a mere arithmetical calculation, that the learned judge had in fact taken into account the appellant's plea of guilt and given a discount when passing sentence. For these reasons we find it unnecessary to call on the learned deputy to respond to the appeal. This appeal is without merit, it is dismissed and the order made by the learned judge is affirmed.

Delivered in open court at the conclusion of arguments on 23 September 2002.